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COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Street address: 629 East Main Street, Richmond, Virginia 23219

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James S. Gilmore, III
Governor

John Paul Woodley, Jr.
Secretary of Natural Resources

Dennis H. Treacy
Director

(804) 698-4000
1-800-592-5482

Mr. Johnny Maddux
Mountain Properties Investment Partnership
Country and Mountain Realty
127 South Main Street
Amherst, Virginia 24251

**CERTIFIED MAIL
RETURN RECEIPT
REQUESTED**

RE: VWP Individual Permit Number 01-0039
Poplar Grove Golf Course, Amherst County, Virginia
Final VWP Individual Permit

Dear Mr. Maddux:

Pursuant to the Virginia Water Protection (VWP) Permit Program Regulation 9 VAC 25-210-10 and § 401 of the Clean Water Act Amendments of 1977, Public Law 95-217, the Department of Environmental Quality (DEQ) has enclosed the original VWP individual permit for the project. The proposed project results in the permanent impact of approximately 5400 square feet of impacts to non-tidal wetlands and impacts to approximately 10,626 linear feet of streams associated with Higginbotham Creek in Amherst County, Virginia.

The provisions and conditions contained therein according to § 401(a)(1) of the Clean Water Act requires that:

"any applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge in the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate, or, if appropriate, from the interstate water pollution control agency having jurisdiction over the navigable waters at the point where the discharge originates or will originate, that any such discharge will comply with the applicable provisions of sections 301, 302, 303, 306, and 307 of this Act."

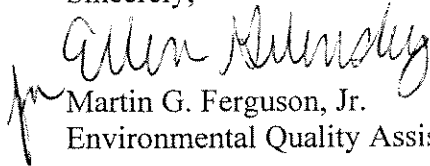
Mr. Johnny Maddux
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As provided by Rule 2A:2 of the Supreme Court of Virginia, you have 30 calendar days from the date of service (the date you actually received this decision or the date it was mailed to you, whichever occurred first) within which to appeal this decision by filing a notice of appeal in accordance with the Rules of the Supreme Court of Virginia with the Director, Department of Environmental Quality. In the event that this decision is served on you by mail, three days are added to that period. Refer to Part 2A of the Rules of the Supreme Court of Virginia for additional requirements governing appeals from administrative agencies.

Alternatively, any owner under §§ 62.1-4.16, 62.1-44.17 and 62.1-44.19 of the State Water Control Law aggrieved by any action of the board taken without a formal hearing, or by inaction of the board, may demand in writing a formal hearing of such owner's grievance, provided a petition requesting such hearing is filed with the board, Said petition must meet the requirements set forth in § 1.23(b) of the board's Procedural Rule Number 1. In cases involving actions of the board, such petition must be filed within 30 days after notice of such action is mailed to such owner by certified mail.

If you have any questions, please contact Mr. Joseph P. Hassell at (804) 698-4072.

Sincerely,



Martin G. Ferguson, Jr.
Environmental Quality Assistant Division Director

Enclosures: Permit Cover Page, Part I – Special Conditions, Part II – General Conditions

cc: Joseph Parrish, Anderson and Associates
VWP permit file



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VWP Individual Permit Number 01-0039

Effective Date: 11/08/2001

Expiration Date: 11/08/2010

VIRGINIA WATER PROTECTION PERMIT ISSUED PURSUANT TO THE STATE WATER CONTROL LAW AND SECTION 401 OF THE CLEAN WATER ACT

Based upon an examination of the information submitted by the owner and in compliance with § 401 of the Clean Water Act as amended (33 USC 1251 et seq.) and the State Water Control Law and regulations adopted pursuant thereto, the board has determined that there is a reasonable assurance that the activity authorized by this permit, if conducted in accordance with the conditions set forth herein, will protect instream beneficial uses and will not violate applicable water quality standards. The board finds that the effect of the impact, together with other existing or proposed impacts to wetlands, will not cause or contribute to a significant impairment to state waters or fish and wildlife resources.

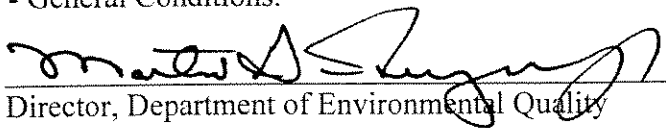
Permittee: Mountain Properties Investment Partnership

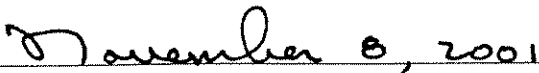
Address: Country and Mountain Realty, 127 South Main Street, Amherst, VA 24251

Activity Location: Higginbotham Creek near the intersections of State Routes 624 and 604 in Amherst County, Virginia

Activity Description: The development of a golf course and residential community with the development of a golf course irrigation lake with impacts to 5400 square feet of non-tidal wetlands and 10,626 linear feet of streams associated with Higginbotham Creek.

The permitted activity shall be in accordance with this Permit Cover Page, Part I - Special Conditions and Part II - General Conditions.


for Director, Department of Environmental Quality


Date

PART I - SPECIAL CONDITIONS

A. Authorized Activities

- 1 In accordance with the Joint Permit Application for "Poplar Grove" dated March 28, 2001; and additional information submitted via e-mail on August 6, 2001 that amended the original application, this permit authorizes the excavation, relocation and filling and flooding of not more than 10,626 linear feet of Higginbotham Creek and its tributaries and the filling of not more than 5400 square feet of nontidal wetlands.
- 2 The permittee shall notify the Department of Environmental Quality, Office of Water Permits of any additional impacts to State waters, including wetlands, associated with this project. These impacts shall be subject to DEQ individual permit review and may require modification of this permit as well as mitigation.
- 3 The project activities described in the Joint Permit Application for "Poplar Grove" shall be adhered to during the life of this permit.
- 4 This permit is valid for a maximum of fifteen (15) years from the date of issuance. Reissuance of the permit may be necessary. In accordance with the Virginia Water Protection (VWP) Permit Regulation (9 VAC 25-210-80), submittal of an application for reissuance must be made to the DEQ-Office of Water Permits no less than 180 days prior to the expiration date of this permit.

B. Clearing, Construction and Operation

- 1 Prior to the start of construction, all non-impacted surface waters within fifty (50) feet of any clearing, grading, and/or filling activities shall be clearly flagged or demarcated for the life of the construction activity within that area. The permittee shall notify all contractors that these marked areas are surface waters where no excavation or filling is to occur.
- 2 All utility line work in State waters shall be performed in such a manner as to minimize disturbance, and the area shall be returned to its original contours and stabilized immediately upon completion of the utility line.
- 3 All dredging and/or filling activities shall be performed so as to minimize turbidity increases of downstream waters.
- 4 All storm water management/best management practice facilities on the project site shall be maintained to prevent the discharge of contaminants to State waters, for which they are designed to treat; and to comply with the State's Water Quality General Standard (9 VAC 25-260-20 A).
- 5 All storm water detention basins shall be built in accordance with the Department of Conservation and Recreation (DCR) Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.
- 6 Wet or uncured concrete shall be strictly prohibited from entry into State waters.

7. No machinery may enter flowing waters in connection with this project.
8. All fill material shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all Department of Environmental Quality Regulations.
9. All construction and demolition activities associated with this project shall be accomplished in such a manner that construction and/or waste materials do not enter State waters.
10. Erosion and sedimentation controls shall be designed in accordance with the DCR Virginia Erosion and Sediment Control Handbook, Third Edition, 1992. These controls shall be placed prior to clearing and grading, and maintained in good working order to minimize impacts to State waters. These controls shall remain in place until the area stabilizes.
11. Within seven (7) days after final grade is achieved, all denuded areas shall be properly stabilized in accordance with the DCR Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.
12. At crossings of perennial streams, pipes and culverts shall be countersunk a minimum of six (6) inches to provide for the re-establishment of a natural stream bottom and a low flow channel. Where culverts cannot be countersunk, open bottom culverts shall be used.
13. All State waters affected by a road crossing shall be restored to their original elevations immediately following the construction of that particular crossing.
14. The construction or work authorized by this VWP permit shall be executed in a manner so as to minimize any adverse impact on instream beneficial uses as defined in § 62.1-10 (b) of the Code of Virginia.
15. Immediately downstream of the construction area, Water Quality Standards (9 VAC 25-260-50 et seq.) shall not be violated as a result of the construction activities.

C. Mitigation

1. Compensatory mitigation for impacts to 10,626 linear feet of non-tidal stream impacts shall consist of the on-site preservation of 10,689 linear feet of stream buffers. The preservation corridors are those outlined in green on the mitigation plan map Appendix A dated August 3, 2001. Stream buffer preservation corridors shall measure 35 feet outward from the top of stream bank within the Golf Course area and from 50 feet outward from the top of the bank outside of the golf course area.

2. Compensatory mitigation for the 0.12 acres of wetland impacts will consist of the creation of not less than 1.2 acres of emergent or scrub shrub wetlands at the locations shown on sheets 12, 14 and 18 of the Grading, Drainage and Erosion Control plan.
3. The compensatory mitigation shall include protection of state waters (including the compensatory mitigation areas and non-impact state waters) within the project boundary in perpetuity. These areas shall be surveyed or platted, and the survey or plat shall be recorded in accordance with the requirements of this section. The restrictions, protections, or preservations, or similar instrument, shall state that no activity will be performed on the property in any area designated as a compensatory mitigation area or non-impact state water, with the exception of maintenance or corrective action measures authorized by the board. Unless specifically authorized by the Board through the modification of this VWP permit, or waiver thereof, this restriction applies to ditching, land clearing or the discharge of dredge or fill material. Such instrument shall contain the specific phrase "ditching, land clearing or discharge of dredge or fill material" in the limitations placed on the use of these areas. The protective instrument shall be recorded in the chain of title to the property. This requirement is to preserve the integrity of compensatory mitigation areas and to ensure that additional impacts to state waters do not occur.
4. Construction of the wetland compensatory mitigation areas shall occur prior to or concurrent with State waters impacts.
5. Post-grading elevations for the compensatory mitigation site(s) shall be sufficient to ensure that wetland hydrology will be achieved on the site to support the goals and objectives of the compensatory mitigation plan.
6. Planting of woody plants shall occur when vegetation is normally dormant unless otherwise approved.
7. The success of the compensatory mitigation shall be based on establishing and maintaining a viable wetland with suitable wetland hydrology, hydric soils or soils under hydric conditions, and hydrophytic plant communities.
8. Wetland hydrology shall be considered established if depths to the seasonal high water table are equal to or less than 12 inches below ground surface for at least 12.5% of the growing season, as defined in the USDA soil survey for the locality of the compensation site in all monitoring years under normal rainfall conditions, as defined in the water budget of the final mitigation plan.
9. The wetland plant community shall be considered established according to the performance criteria specified if species composition consists of greater than 50% facultative (FAC) or wetter (FACW or OBL) vegetation, as expressed by plant stem density or aerial cover.
10. Noxious weeds shall be identified and controlled.

11. If the compensatory mitigation area fails to be established as viable wetlands, the reasons for this failure shall be determined and a corrective action plan, schedule, and monitoring plan shall be submitted to the board for approval prior to or with the next required monitoring report. All problems shall be corrected by the permittee. Should significant changes be necessary to establish wetlands, the monitoring plan shall begin again, with year one being the year changes are complete.

D. Wetland Mitigation Site Monitoring

1. The permittee shall submit a Wetland Mitigation Monitoring Plan to the DEQ-OWP for review and approval within sixty (60) days of the effective date of this permit. The Wetland Monitoring Plan shall include the following: Number and locations of permanent photographic monitoring stations and ground water monitoring wells. At least one well and one photographic site shall be required for each compensatory mitigation site. Monitoring for hydrology, and hydrophytic vegetation shall begin at the first complete growing season (year 1) following compensatory mitigation site construction. Monitoring shall be required for years 1, 2, 3, 5, 7 and 10, with years 7 and 10 only required if the site success criteria were not achieved during the previous monitoring event.
2. Not sooner than year 5 of the permit term the permittee shall delineate the wetland boundary for the compensatory mitigation sites. The limits of the wetland shall be based on the results of the hydrology, and vegetation monitoring data and shall be shown on the site plan. Total compensatory wetland acreage shall be computed based on that boundary and reported at the end of that year's monitoring cycle.
3. Photographs shall be taken at the compensatory mitigation sites from the permanent markers identified in the final mitigation plan, and established to ensure that the same locations and view directions at the site or sites are monitored in each monitoring period.
4. The establishment of wetland hydrology shall be measured during the growing season, with the location and number of monitoring wells, and frequency of monitoring for each site, set forth in the final monitoring plan. Once the wetland hydrology success criteria have been satisfied for a particular monitoring year, monitoring may be discontinued for the remainder of that monitoring year.
5. The establishment of wetland vegetation shall be documented based on photographic monitoring and shall take place in August or September during the growing season of each monitoring year, unless otherwise authorized in the monitoring plan.
6. All Wetland Mitigation Monitoring Reports shall be submitted in accordance with the monitoring schedule by October 31st. Any alterations and maintenance conducted on the compensatory mitigation sites shall be reported. Invasive species occurrences and control of these occurrences shall also be reported to the board.

E. Water Withdrawal

1. After initial grow out of the golf course the maximum combined water withdrawal from the irrigation lakes shall not exceed not exceed 7.3 million gallons in any month
2. After initial grow out of the golf course the maximum combined annual water withdrawal shall not exceed 36.3 million gallons.
3. The permittee shall report water use in compliance with the Water Withdrawal Reporting Regulation 9 VAC 25-200 et seq.

F. Reporting

1. The board shall be notified in writing at least 10 days prior to the start of construction activities authorized by this VWP permit. The notification shall include identification of the impact area at which work will occur and a projected schedule for completing work at each permitted impact area.
2. The written conservation covenants referenced in special condition I. C.3 shall be recorded within one hundred and eighty (180) days of the issuance of the permit, and notification of recordation received by the DEQ-OWP within sixty (60) days of recordation.
3. The permittee shall submit the Wetland Mitigation Monitoring Reports (as required in Part I.E.8) to the DEQ-OWP by the 31st of October beginning in the year mitigation areas are planted.
4. Written communications and reports required by this permit shall be submitted with the appropriate Virginia Water Protection Permit number to the DEQ-OWP at the following address:

Department of Environmental Quality
Office of Water Permits
VWPP Program
P.O. Box 10009
Richmond, Virginia 23240

PART II - GENERAL CONDITIONS

A. Duty to Comply

The permittee shall comply with all conditions of the permit. Nothing in this permit shall be construed to relieve the permittee of the duty to comply with all applicable Federal and State statutes, regulations and toxic standards and prohibitions. Any permit non-compliance is a violation of the Clean Water Act and State Water Control Law, and is grounds for enforcement action, permit termination, revocation, modification, or denial of a permit renewal application.

B. Mitigation Requirements

The permittee shall take all reasonable steps to:

1. Avoid all adverse environmental impacts which could result from the activity;
2. Where avoidance is impractical, minimize the adverse environmental impact; and
3. Where impacts cannot be avoided, provide mitigation of the adverse impact on an in-kind basis.

C. Reopener

This permit may be reopened to modify the conditions of the permit to meet new regulatory standards duly adopted by the Board. Causes for reopening permits include, but are not limited to:

1. When State law prohibits conditions in a permit which are more stringent than an applicable effluent limitation guideline;
2. When subsequently promulgated effluent guidelines are modified, and are based on best conventional pollutant control technology; or
3. When the circumstances on which the previous permit was based have materially and substantially changed, or special studies conducted by the Department or the permittee show material and substantial change since the time the permit was issued and thereby constitute cause for permit modification or revocation and reissuance.

D. Change in Management of Pollutants

All discharges and other activities authorized by this permit shall be made in accordance with the terms and conditions of this permit. The permittee shall submit a new application 180 days prior to any proposed modification to their activity which will:

1. Result in a significantly new or substantially increased discharge of dredged or fill material, or a significant change in the nature of the pollutants; or
2. Violate or lead to the violation of the terms and conditions of the permit or the Water Quality Standards of the Commonwealth.

E. Duty to Halt or to Reduce Activity

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

F. Compliance with State and Federal Law

Compliance with this permit constitutes compliance with the Virginia Water Protection Permit requirements of the State Water Control Law. Nothing in this permit shall be construed to preclude the institution of any legal action under or relieve the permittee from any responsibilities, liabilities, or other penalties established pursuant to any other State law or regulation or under the authority preserved by Section 510 of the Clean Water Act.

G. Property Rights

The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal property rights, nor any infringement of federal, state or local laws or regulations.

H. Severability

The provisions of this permit are severable.

I. Right of Entry

The permittee shall allow authorized state and federal representatives, upon the presentation of credentials, at reasonable times and under reasonable circumstances:

1. To enter the permittee's property, public or private, and have access to, inspect and copy any records that must be kept as part of the permit conditions;
2. To inspect any facilities, operations or practices (including monitoring and control equipment) regulated or required under the permit;
3. To sample or monitor any substance, parameter or activity for the purpose of assuring compliance with the conditions of the permit or as otherwise authorized by law.

For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained herein shall make an inspection time unreasonable during an emergency.

J. Transferability of Permits

This permit may be transferred to another person by a permittee if:

1. The current permittee notifies the Department of Environmental Quality within 30 days of the proposed transfer of the title to the facility or property;
2. The notice of the proposed transfer includes a written agreement between the existing and proposed new permittee containing a specific date of transfer of permit responsibility, coverage and liability between them; and
3. The Department of Environmental Quality does not within the 30 day time period notify the existing permittee of the State Water Control Board's intent to modify or revoke and reissue the permit.

Such a transferred permit shall, as of the date of the transfer, be as fully effective as if it had been issued directly to the new permittee.

K. Permit Modification

The permittee shall notify the Department of Environmental Quality of any modification of this activity and shall demonstrate in a written statement to the Department that said modification will not violate any conditions of this permit. If such demonstration cannot be made, the permittee shall apply for a modification of this permit. This permit may be modified when any of the following developments occur:

1. When additions or alterations have been made to the affected facility or activity which require the application of permit conditions that differ from those of the existing permit or are absent from it;
2. When new information becomes available about the operation or discharge covered by the permit which was not available at permit issuance and would have justified the application of different permit conditions at the time of permit issuance;
3. When a change is made in the promulgated standards or regulations on which the permit was based;
4. When it becomes necessary to change final dates in schedules due to circumstances over which the permittee has little or no control such as acts of God, materials shortages, etc. However, in no case may a compliance schedule be modified to extend beyond any applicable statutory deadline of the Clean Water Act;
5. When an effluent standard or prohibition for a toxic pollutant must be incorporated in the permit in accordance with provisions of Section 307(a) of the Clean Water Act;
6. When changes occur which are subject to "reopener clauses" in the permit;
7. When the Department of Environmental Quality determines that minimum instream flow levels resulting from the permittee's withdrawal of water are detrimental to the instream beneficial use, the withdrawal of water should be subject to further net limitations or when an area is declared a Surface Water Management Area pursuant to State Water Control Law Sections 62.1-242 through 253, during the term of the permit;

8. When the level of discharge of a pollutant not limited in the permit exceeds the level which can be achieved by available methodology for controlling such discharges;
9. When the permittee begins or expects to begin to cause the discharge of any toxic pollutant not reported in the application; or
10. When other states were not notified of the change in the permit and their waters may be affected by the discharge.

L. Permit Termination

This permit, after public notice and opportunity for a hearing, is subject to termination. Causes for termination are as follows:

1. Noncompliance by the permittee with any condition of the permit;
2. The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;
3. The permittee's violation of a special or judicial order;
4. A determination that the permitted activity endangers human health or the environment and can be regulated to acceptable levels by permit modification or termination; or
5. A change in any condition that requires either a temporary or permanent reduction or elimination of any activity controlled by the permit.

M. Civil and Criminal Liability

Nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

N. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Clean Water Act or Sections 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

O. Unauthorized Discharge of Pollutants

Except in compliance with this permit, it shall be unlawful for the permittee to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances, or,
2. Otherwise alter the physical, chemical, or biological properties of such state surface waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses.